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3 UNITED STATES DISTRICT COURT

4 DISTRICT OF NEVADA

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6 WILLIAM CARON,

Case No. 3:21-cv-00259-MMD-CLB

7 Petitioner,

ORDER

8 v.

9 AARON FORD,

Respondent.

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11 Petitioner William Caron submitted a *pro se* 28 U.S.C. § 2254 *habeas corpus*  
12 petition. (ECF No. 1-1 (“Petition”).) Caron’s application to proceed *in forma pauperis* (ECF  
13 No. 1) is granted. The Federal Public Defender (“FPD”) has filed a motion to be appointed  
14 counsel for Caron. (ECF No. 3 (“Motion”).) As further discussed below, the Motion is  
15 granted.

16 There is no constitutional right to appointed counsel for a federal *habeas corpus*  
17 proceeding. See *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*,  
18 999 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally  
19 discretionary. See *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*,  
20 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir. 1984), *cert. denied*,  
21 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case  
22 are such that denial of counsel would amount to a denial of due process, and where the  
23 petitioner is a person of such limited education as to be incapable of fairly presenting his  
24 or her claims. See *Chaney*, 801 F.2d at 1196.

25 The FPD explains that Caron was sentenced to 375 years to life and asserts that  
26 the issues in Caron’s case are complex, including competency questions and complex  
27 constitutional violations. The FPD notes that Caron has time remaining on his federal one-  
28 year statute of limitations. The FPD’s Motion is granted.

1           It is therefore ordered that Petitioner William Caron's application to proceed *in*  
2 *forma pauperis* (ECF No. 1) is granted.

3           The Clerk of Court is directed to detach and file Caron's Petition (ECF No. 1-1).

4           It is further ordered that Caron's motion for appointment of counsel (ECF No. 3) is  
5 granted.

6           It is further ordered that the Federal Public Defender for the District of Nevada is  
7 appointed to represent Petitioner William Caron.

8           The Clerk of Court is further directed to add Aaron D. Ford, Nevada Attorney  
9 General, as counsel for Respondent and provide Respondent an electronic copy of all  
10 items previously filed in this case by regenerating the Notice of Electronic Filing to the  
11 office of the Attorney General only.

12           It is further ordered that counsel for Caron meet with Caron as soon as reasonably  
13 possible, if counsel has not already done so, to: (a) review the procedures applicable in  
14 cases under 28 U.S.C. § 2254; (b) discuss and explore with Caron, as fully as possible,  
15 the potential grounds for *habeas corpus* relief in Caron's case; and (c) advise Caron that  
16 all possible grounds for *habeas corpus* relief must be raised at this time in this action and  
17 that failure to do so will likely result in any omitted grounds being barred from future  
18 review.

19           It is further ordered that Caron has 90 days from the date of this order to file and  
20 serve on Respondent an amended petition for writ of *habeas corpus*, if any.

21           It is further ordered that Respondent has 45 days after service of an amended  
22 petition within which to answer, or otherwise respond to, the amended petition. If Caron  
23 does not file an amended petition, Respondent has 45 days from the date on which the  
24 amended petition is due within which to answer, or otherwise respond to, Caron's original  
25 Petition. Any response filed should comply with the remaining provisions below, which  
26 are entered pursuant to Habeas Rule 5.

27           It is further ordered that any procedural defenses raised by Respondent in this  
28 case be raised together in a single consolidated motion to dismiss. In other words, the

1 Court does not wish to address any procedural defenses raised herein either in *seriatum*  
2 fashion in multiple successive motions to dismiss or embedded in the answer. Procedural  
3 defenses omitted from such motion to dismiss will be subject to potential waiver.  
4 Respondent should not file a response in this case that consolidates their procedural  
5 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. §  
6 2254(b)(2) as to any unexhausted claims clearly lacking merit. If Respondent does seek  
7 dismissal of unexhausted claims under § 2254(b)(2): (a) they should do so within the  
8 single motion to dismiss not in the answer; and (b) they should specifically direct their  
9 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*,  
10 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses, including  
11 exhaustion, should be included with the merits in an answer. All procedural defenses,  
12 including exhaustion, instead must be raised by a motion to dismiss.

13 It is further ordered that, in any answer filed on the merits, Respondent must  
14 specifically cite to and address the applicable state court written decision and state court  
15 record materials, if any, regarding each claim within the response as to that claim.

16 It is further ordered that Caron will have 30 days after service of the answer or  
17 responsive pleading to file and serve his response.

18 It is further ordered that any additional state court record exhibits filed herein by  
19 either Caron or Respondent be filed with a separate index of exhibits identifying the  
20 exhibits by number. The CM/ECF attachments that are filed also must be identified by the  
21 number or numbers of the exhibits in the attachment.

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1 It is further ordered that, at this time, the parties send courtesy copies of *any*  
2 *responsive pleading and all INDICES OF EXHIBITS ONLY* to the Reno Division of this  
3 Court. Courtesy copies are to be mailed to the Clerk of Court, 400 S. Virginia Street,  
4 Reno, NV, 89501, and directed to the attention of "Staff Attorney" on the outside of the  
5 mailing address label. No further courtesy copies are required unless and until requested  
6 by the Court.

7 DATED THIS 28<sup>th</sup> Day of June 2021.

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13 MIRANDA M. DU  
14 CHIEF UNITED STATES DISTRICT JUDGE  
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